

ESTATE OF HUBERT FRANKLIN COOK

IBIA 76-3

Decided March 4, 1976

Appeal from an order denying petition for rehearing.

Affirmed.

1. Indian Probate: Half Blood: Generally

State statutes of descent and distribution as construed and interpreted by the highest court of the state involved will be considered by the Department as controlling in trust heirship proceedings.

APPEARANCES: Pipestem & Rivas, by F. Browning Pipestem, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This matter comes before the Board on appeal from an Administrative Law Judge's order denying petition for rehearing.

It appears that Hubert Franklin Cook, an unallottee of the Caddo and Pima Tribes died intestate at Fort Sill, Oklahoma, on April 27, 1973, survived by four nieces and three nephews, children of Josephine Cook, decedent's half-blood Pima sister from the first marriage of decedent's father, Luke Frank Cook. Luke Frank Cook, an allotted Pima Indian died intestate on March 16, 1971. Decedent's mother, Annie Johnson, an allotted Caddo Oklahoma Indian, died intestate on October 3, 1949.

At the time of his death, the decedent was possessed of interests in certain allotted lands some of which were inherited from his father, Luke Frank Cook, and some from his mother, Annie Johnson.

After hearing held on August 21, 1974, Administrative Law Judge John F. Curran issued an Order Determining Heirs on February 21, 1975, wherein he found that four nieces and three nephews referred to, supra, were entitled to inherit decedent's interests in the trust and restricted property located on the Wichita-Caddo, Absentee Shawnee, Salt River and Gila River Reservations.

On February 5, 1975, certain whole-blood first cousins of the decedent on his mother Annie Johnson's side filed a motion and demand for hearing to determine heirs with respect to the lands situated in the State of Oklahoma inherited by decedent through his maternal Caddo ancestors and blood line.

Judge Curran decided in the Order Determining Heirs of February 21, 1975, that intestate succession as relating to the Oklahoma property came under Subsection 6, Section 213, Title 84, Oklahoma Statutes. Pursuant thereto, the Judge concluded the nieces and nephews are the nearest blood relatives and the "next of kin" and are the heirs at law to the exclusion of the cousins.

The cousins petitioned for rehearing contending that the Order Determining Heirs as it related to their motion and demand for hearing referred to, supra, was in error. The petitioners further contended that In the Matter of the Estate of Robbs v. Howard, 504 P.2d 1228 (Okl. 1972), wherein the Oklahoma Supreme Court construed the provision of the Oklahoma Statute relating to kindred of the half-blood, was distinguishable and hence not representative of the law applicable to this case.

Administrative Law Judge Jack M. Short, who succeeded Judge Curran, denied said petition on May 1, 1975. He concluded that Robbs did apply and that this case was not distinguishable.

In his Order of May 1, 1975, denying said petition, Judge Short arrived at the following conclusion--

In Robbs, the Supreme Court of Oklahoma construed 84 O.S. 1971, § 222, which provides:

Kindred of the half-blood inherit equally with those of the whole blood in the same degree, unless the inheritance come [sic] to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

and held at page 1,232 of its opinion:

We therefore hold that our half blood statute, 84 O.S. 1971, § 222, is applicable only when the surviving half blood kindred and whole blood kindred are related to decedent in the same degree, and that it does not operate to disinherit nearer half blood kindred not of the blood of the ancestor in favor of more remote whole blood kindred who are of the blood of the ancestor. [Emphasis added.)

and specifically overruled the contrary holding in Thompson v. Smith, 102 Okl. 50, 227 P. 77 (1924).

Also, at page 1,230 of its opinion in Robbs, the Supreme Court stated:

In 1930, in the face of intervening conflicting decisions on the question, this Court abandoned the doctrine that Indian allotments are ancestral estates and specifically overruled the Hill holding on that question. See In re Yahola's Estate, 142 Okl. 79, 285 P. 946.

Judge Curran stated on page 2 of his Order of February 21, 1975, "The nieces and nephews are related to the decedent in the third degree while the first cousins are related to decedent in the fourth degree." This is an undisputed fact. Hence, 84 O.S. 1971,

§ 222 cannot apply in view of Robbs. And, intestate succession is governed by 84 O.S. 1971 § 213(6). Dobson v. Mecom, Okl. 311 P.2d 210 (1956).

[1] The Interior Board of Indian Appeals held in Estate of Minnie May Riordan, 2 IBIA 98 (1973):

State statutes of descent and distribution as construed and interpreted by the highest court of the state involved will be considered by the Department as controlling in trust heirship proceedings.

The Supreme Court of Oklahoma is the highest court in Oklahoma. It has ruled without equivocation on each of the issues raised by Petitioners and contrary to their contentions.

We adopt the Judge's findings and conclusions as our own.

We do not agree with appellants that Robbs is distinguishable here, in light of the foregoing and the fact that the nieces and nephews are related to the decedent in the third degree while the first cousins are related to the decedent in the fourth-degree.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Administrative Law Judge dated May 1, 1975, denying appellants' petition to rehear, be, and the same is hereby AFFIRMED and the appeal herein is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

I concur:

Alexander H. Wilson
Administrative Judge